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claimed invention to one of ten distinct species. Although the Examiner identified the correct legal standard for evaluating a restriction/election requirement of the National Stage application as PCT Rules 13.1 and 13.2, the Examiner has applied the standard incorrectly.

The Examiner asserted that the application contains patentably distinct species as follows:

Species 1a in which the stabilization means includes external wings or fins (claims 8 and 28);

Species 1b in which the stabilization means includes dimples or grooves (claims 9 and 29);

Species 2a in which the projectile is a bullet (claims 11 and 31);

Species 2b in which the projectile is a shell (claims 12 and 32);

Species 3a in which the cavity has a concave shape (claims 13 and 33);

Species 3b in which the cavity has an ovaloid shape (claims 14 and 34);

Species 3c in which the cavity has a cylindrical shape (claims 15 and 35);

Species 4a in which the charge is detonated by electrical ignition (claims 16 and 36);

Species 4b in which the charge is detonated by a firing pin (claims 17 and 37);
and

Species 4c in which the charge is detonated by laser ignition (claims 18 and 38).

Applicant respectfully traverses this basis for election. Applicant emphasizes that the Examiner did not properly apply the Unity of Invention standard pursuant to PCT Rule 13.1. The Examiner's basis for the restriction is improper for the following reasons: first of all, the Examiner has failed to properly construe and consider the

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claims under the "special technical feature" standard and, furthermore, based upon this standard, the election is clearly improper. The standard, as described clearly in M.P.E.P. sections 1850 and 1893.03(d), is not whether one group of claims has a feature which is not in another group (as erroneously implied in this case by comparing the dependent claims of the application), but whether the groups can be read to have a common technical relationship, i.e., whether a special technical feature is common to the groups. Accordingly, if each of the groups can be read to have one or more common special technical features or relationships, then they simply cannot be restricted.

In this case, the technical relationship or technical features common to all of the claims are each of the features recited in the independent claims 1 and 21 from which the claims asserted to be directed to distinct species depend. Applicant emphasizes that these claims have in common each of the features recited in at least claims 1 and 21 from which they depend. Thus, it is submitted that the Examiner has clearly disregarded the claim language in an erroneous attempt to support the restriction requirement that is otherwise clearly improper under PCT Rules 13.1 and 13.2.

Further, M.P.E.P. 1850 paragraph "A" makes clear that dependent claims cannot be separated from Independent claims because the "unity of invention" standard must be evaluated on the basis of independent claims only. Accordingly, since the only independent claims are 1, 21 and 41, since independent claims 1 and 21 have been acknowledged by the Examiner as being generic, and because the dependent claims

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asserted to be directed to distinct species depend from generic claims, none of the claims can be properly restricted as species under the unity of invention standard. Applicant emphasizes that any species election, much less, one that is based upon the specification disclosure or dependent claims, is an improper basis for restriction under the unity of invention standard.

Accordingly, Applicant submits that under the "unity of invention" standard, the Examiner has set forth no proper basis for restricting the invention to any of the groups or species.

Applicant further points out that all of the claims clearly relate to a common subject matter as discussed above. Accordingly, the recitations of each of the independent claims, as well as the various dependent claims are so closely related for examination purposes as to make the restriction requirement entirely inappropriate under any proper basis. For this reason alone, it is submitted that restriction is inappropriate and that all the claims in the present application should be examined together.

Furthermore, it is believed that the features shown in the ten Species all relate to a shaped charge and projectile. Therefore, the searches for each Species must be at least somewhat overlapping for the groups. Thus, no undue burden is placed on the Examiner when examining all of the claims together.

For all these reasons, and consistent with the office policy as set forth in M.P.E.P. §§ 803, 1850 and 1893.03(d), Applicant respectfully requests that the

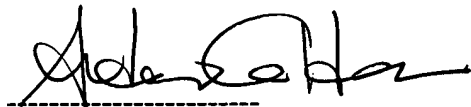
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Examiner reconsider the position taken in the above-mentioned Official Action and withdraw the election requirement in the present application. Accordingly, the Examiner's restriction requirement is believed to be improper and has been traversed for the reasons set forth above.

Nevertheless, in order to be fully responsive, Applicant has elected with traverse the invention defined by the Examiner as Species 2a, directed to at least claims 11 and 31, and also at least claims 1-7, 19-27 and 39-41 in the event that the Examiner chooses not to reconsider and withdraw the restriction requirement. Authorization is hereby given to charge any fees necessary for consideration of this paper to deposit account 19-0089.

Respectfully submitted,
Richard William Ross URWIN

A handwritten signature in black ink, appearing to read "Andrew M. Calderon", written over a horizontal dashed line.

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